

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

HENRY C. GREGORY, JR.	§	
	§	
v.	§	CIVIL ACTION NO. G-04-375
	§	
JO ANNE BARNHART, COMMISSIONER	§	
OF SOCIAL SECURITY	§	

ORDER

Before the Court is Plaintiff Henry C. Gregory, Jr.' s Motion for Attorney' s Fees under the Equal Access to Justice Act (" EAJA"). 28 U.S.C. § 2412(d). That statute provides, in part, that:

A Court shall award to a prevailing party [in certain suits against the United States] . . . fees and other expenses . . . unless the Court finds that the position of the United States was substantially justified.

28 U.S.C. § 2412(d)(1)(A). Attorneys who successfully represent persons seeking benefits under the Social Security Act fall within the attorney' s fee provisions of the EAJA. *Herron v. Bowen*, 788 F.2d 1127 (5th Cir. 1986). The Court remanded the instant case to the Commissioner on April 19, 2005. The Defendant has not opposed Plaintiff' s request.

Plaintiff has submitted an itemized list of services showing that 30.40 hours were expended on this case. The EAJA provides that attorney' s fees shall be limited to \$125 an hour " unless the court determines that an increase in the cost of living . . . justifies a higher fee." 28 U.S.C. § 22412(d)(2)(A). Plaintiff claims the hourly rate should be set at \$152.61 based on the Department of Labor' s Consumer Price Index (" CPI"), as it is calculated for Dallas/Ft. Worth, Texas. The Court' s review of the data submitted by the Commissioner shows that his calculation

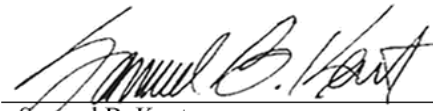
is correct and that attorney' s fees should be set at \$4,639.32 (30.40 hours x \$152.61 per hour).

In addition, Plaintiff is entitled to filing fees and costs in the amount of \$239.81.

For all these reasons, the Court finds that Plaintiff' s Motion for Attorney' s Fees (Instrument No. 17) is **GRANTED** in the amount of \$4,879.15.

IT IS SO ORDERED.

DONE in Galveston, Texas, this 13th day of June, 2005.



Samuel B. Kent
United States District Judge

SAMUEL B. KENT
UNITED STATES DISTRICT JUDGE